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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive Local)	
Exchange Carriers)	
)	
Petition of U S WEST Communications, Inc.)	CC Docket No. 98-157
for Forbearance from Regulation as a Dominant)	
Carrier in the Phoenix, Arizona MSA)	

**Reply Comments of the
MINNESOTA CLEC CONSORTIUM**

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REPLY COMMENTS OF MINNESOTA CLEC CONSORTIUM

The following Reply Comments by the Minnesota CLEC Consortium ("MCC") are submitted in further response to the Further Notice of Proposed Rulemaking released August 27, 1999 (the "FNPRM"). The MCC members are small competitive local exchange carriers ("CLECs") that are either currently providing or are implementing facilities based competitive local exchange service in Minnesota, including a number of smaller, rural communities.

The Comments filed in this docket clearly establish the following points.

1. IXCs Cannot Unilaterally Refuse To Accept CLEC Access Services.

Section 201(a) compels "every common carrier" to furnish "communication service upon reasonable request therefor ...". Section 202(a) prohibits "unreasonable discrimination ... in charges ... or services" that will "subject ... [a] class of persons ... to ... undue or unreasonable prejudice or disadvantage." In their comments, AT&T, Sprint, and MCI did not present any

significant legal authority to the contrary.¹ Further, permitting IXC's to unilaterally refuse to provide service, particularly the largest, national IXC's already serving a geographic area, would discourage local competition – particularly in rural areas – and cause severe and direct harm to rural customers.

Rural consumers are especially disadvantaged and vulnerable to this practice, since the high cost of providing service to them typically restricts choices for service providers in the first instance. A CLEC will have even less motivation to provide a choice of service provider in rural communities if there is a greater risk of discriminatory treatment by IXC's.

Further, as several parties noted, Section 208 provides a mechanism to resolve an IXC's concerns regarding a CLEC's access charges.² There is no legal or policy basis to abandon these existing tools in favor of an approach leaving service obligations at the discretion of IXC's.

2. A Benchmark That Reflects The Characteristics Of The CLECs Should Be Adopted.

Many commenters persuasively urge the adoption of a benchmark to establish presumptively reasonable access rates, with carriers having the ability to justify rates above the benchmark by demonstrating costs above the benchmark.³

Use of a benchmark that either employs an overall average of industry rates or the rates of the incumbent LEC in the area is unreasonable for CLECs serving rural areas. This is particularly true when the incumbent LEC is a large Price Cap LEC, with access rates that reflect

¹ AT&T Comments on LEC Pricing Flexibility FNPRM, pp. 27-32; Comments of Sprint Corporation, pp. 14-28; and MCI WorldCom Comments, pp. 18-22.

² Comments of the Association for Local Telecommunications Services (ALTS), pp. 18-19; Comments of Cox Communications, Inc., pp. 4-5; and Organization for the Promotion and Advancement of Small Telecommunications Companies, pp. 4-5.

³ Comments of Rural Independent Competitive Alliance (RICA), pp.24-25; Comments of Telecommunications Resellers Association, pp. 9-13; Comments of McLeodUSA Telecommunications Service (McLeod), pp. 4-5; Comments of Allegiance Telecom, p. 12; Comments of CTSA, pp. 18-19.

the lower cost of serving dense, urban areas.⁴ Notwithstanding the desires of the IXC's to minimize access charges at every opportunity, there is no basis to either expect or require the access rates of small CLECs, particularly those serving rural markets, to meet the access rates of large incumbent LECs. Rather, the access rates of the Price Cap LECs are based on their economies of scale and averaged costs of serving lower cost, denser urban areas. Further, the rate comparisons offered by AT&T are inaccurate and ignore non-usage based charges that incumbent LECs impose on IXC's.

The MCC encourages the Commission to adopt an easily obtainable benchmark which is most representative of the CLEC's operating characteristics. For CLECs affiliated with an incumbent LEC, the benchmark would be based on either the individual access rate of the affiliated incumbent or the NECA rate, increased or decreased by the NECA settlement. For other CLECs, the NECA rate could provide an appropriate benchmark, as urged by several parties.⁵ Rates at or below the benchmark would be presumed to be reasonable. The CLEC should have the opportunity to justify higher rates in response to a complaint by an IXC.

AT&T's proposal for the use of a "permissive" tariff mechanism⁶ should be rejected as excessively burdensome to CLECs and the Commission. It would require CLECs to submit and the Commission to review historical and projected service cost studies and estimates of the tariff's effects on traffic and revenues as specified in Section 61.38 and other showings required in Parts 32, 36, 64 and 69.⁷

⁴ Comments of Competitive Communications Group, LLC (CCG), p. 8.

⁵ Comments of McLeod, pp. 4-5; Comments of Winstar Communications, Inc., pp. 4-5.

⁶ Comments of AT&T at pp. 30-31.

⁷ Id. at p. 31, n. 54.

3. An “Escape Valve” Leading To Additional Charges To End Users For Long Distance Usage Should Not Be Adopted.

Most of the commenters, including the MCC, recommend against the adoption of an “escape valve” under which CLECs desiring to charge more than the benchmark access rate would recover the difference from their local service customers.⁸ It would be inappropriate to impose additional access charges on end users in order to allow IXC’s to avoid payment of reasonable and lawful charges. Further, imposing deaveraged charges for long distance usage based on the identity of the LEC providing service would be inconsistent with both the letter and the spirit of Section 254(g), which unequivocally requires uniform long distance rates. Rather, the solution is to establish an appropriate benchmark, discussed above, which sets reasonable access rates for CLECs.

⁸ Comments of CCG, pp. 12-13; Comments of ALTS, pp. 36-38; and Comments of RICA, p. 22.

CONCLUSION

In order to foster competition and consumer choice in local service, IXC's cannot be permitted to selectively refuse CLEC access services. Current refusals by IXC's to pay validly tariffed interstate access charges are crippling local competition and merit expeditious action by the Commission. Establishment of a benchmark that fairly represents the characteristics of rural CLEC's and their customers will define presumptively reasonable rates. Rates above that benchmark should be justifiable on a case-by-case basis.

The Minnesota CLEC Consortium appreciates the opportunity to submit these Reply Comments.

Dated: November 29, 1999

Respectfully submitted,

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Tina M. Pauls, being first duly sworn on oath, deposes and states that on the 29th day of November, 1999, copies of the Minnesota CLEC Consortium Reply Comments Regarding Access Charge were hand delivered or mailed by United States first class mail, postage prepaid thereon, to the following:

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